IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1830 of 1994

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B A SHAH P A TO ADDL. DIRECTORCOMMISSIONERATE OF HEALTH

Versus

STATE OF GUJARAT

Appearance:

MR BP TANNA for Petitioner No. 1

MR KP RAWAL, AGP, for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/07/2004

ORAL JUDGEMENT

1.1 The petitioner was appointed as English Stenographer (Gr.II) in the Medical College at Vadodara in the pay-scale of Rs.140-270 and he joined the service on 1.2.1964. Thereafter the Government in General Administration Department introduced a Scheme of

Centralised Recruitment of Stenographers Grade II and Steno-Typists (Gujarati and English) in Regional and District Office vide Resolution dated 24.7.1964. Since the petitioner joined service on 1.2.1964, and the aforesaid Scheme was introduced thereafter, the petitioner was exempted from passing the competitive examination conducted under the said Scheme.

1.2 After some time the post of English Stenographer in the Medical College at Baroda was discontinued. Therefore the petitioner was transferred to the office of the Directorate of Medical Education, Ahmedabad, vide Office Order dated 21.8.1976 where he joined on 26.8.1976. Thereafter by order dated 1.7.1985 the services of the petitioner were regularised with effect from 1.2.1964 and he was also given Selection Grade with effect from 1.7.1979 by Office Order dated 6.9.1985.

1.3 In order to deal with the problem of stagnation in many cadres due to absence or restricted chances of promotions, the Government in Finance Department brought in the Scheme of Higher Grade Scale vide Resolution dated 5.7.1991. In pursuance of this the petitioner was granted the first higher time scale vide office order dated 24.10.1991 and the petitioner was placed in the pay scale of Rs.2000-3500 with effect from 1.6.1987. Again the petitioner was given second higher time scale of Rs.2200-4000 with effect from 1.6.1987 by order dated 21.7.1992. However, thereafter both the above orders were kept in abeyance vide office order dated 12.8.1992. This was done on the basis of the instructions received from Government in General Administration Department vide letter dated 26.7.1991. As per the said letter, prior sanction from General Administration Department was required to be obtained. Therefore a proposal in the form of prior sanction was sent to the General Administration Department on 12.8.1992. In the proposal it was requested that as the petitioner's services were regularised by the General Administration Department, necessary permission may be given. Certain queries were raised by the Government which were properly replied to. However, the Commissionerate of Health, Medical Service and Medical Education was asked to send the petitioner's proposal for granting the benefit of higher time scale to the Collector, Ahmedabad District, Ahmedabad on the ground that the petitioner's name was not there in the seniority list of English Stenographers maintained by General Administration Department. This request was also promptly complied with. However, the Collector, Ahmedabad, vide his letter dated 23.3.1993 informed the Deputy Collector, Medical Education and Research, Gujarat

State, Ahmedabad, that the petitioner cannot be granted higher time-scale. Therefore, the Additional Director, Medical Education and Research, wrote letter dated 29.5.1993 requesting to reconsider the case. Again he addressed another letter on 12.7.1993 requesting to include the name of the petitioner in the seniority list according to Government rules. Lastly the petitioner has also addressed a letter to the Government on 9/18th June 1993 requesting his case. However, no reply has been received by the petitioner and hence he filed the present petition.

2.1 Ms. Kerawala for Mr. B.P. Tanna for the petitioner submitted that the petitioner's services came to be regularised by Office order dated 1.7.1985 with the concurrence of the General Administration Department and therefore, after a period of about 29 years they cannot take a plea that the petitioner is not under that Department. Learned counsel further submitted that the General Administration Department was bound to maintain the seniority of the petitioner and ought to have granted higher time-scale to him. She submitted that there was no justification for denying the aforesaid benefits to the petitioner.

3.1 Affidavit in reply has been filed on behalf of the respondent no.1. In the reply it is contended that the petitioner was recruited by the Dean, Medical College, Baroda and thereafter his appointment was considered under CRS and therefore he is part of establishment of District Collector. It is further pointed out that the District Collector is the competent authority to give him the higher pay-scale as well as to insert his name in the seniority list and the General Administration Department had directly written a letter to the District Collector, Ahmedabad and requested to insert the name of the petitioner in the seniority list and to give him higher pay-scale.

4.1 This matter was placed before this Court earlier and by order dated 6th July 2004 the Collector, Ahmedabad has accepted the claim of the petitioner and therefore the only question for consideration of this Court is with regard to the payment of retirement and other consequential dues to the petitioner.

5.1 Ms Kerawala strongly relied upon Government Resolution dated 20th December 2002 wherein it is stated that it is the policy of the State Government that if there is a delay in payment of retirement dues, more particularly gratuity, the State Government will pay

interest at the rate of 9% on the amount in question. She has also relied upon a Government Resolution dated 16th August 1994 introducing various policies for improving the service conditions including the pay-scales.

5.2 Ms Kerawala relied upon a decision of the Apex Court in the case of Baiji Nath Gupta Vs. State of Bihar and others, reported in (1996) 10 SCC 297 (= 1997 SCC (L&S) 71), wherein it is held that if the pension was not determined in accordance with the rules on account of any laches or grounds on the part of the appellant, the appellant obviously would not be entitled to payment of interest for the delayed payment of pension and if the Government was responsible for the delay, necessarily the appellant would be entitled to the payment of interest on the delayed payment.

5.3 She has relied upon a decision of the apex Court in the case of Uma Agrawal Vs. State of UP, reported in AIR 1999 SC 1212 (199) 3 SCC 438: 1999 SCC (L&S) 742: (1999)2 CLR 156: (1999) 2 SLR 22: (1999)1 LLJ 1335). In para 5 of the said decision it is held as under:

> "5. We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired Government servants will not feel harassed because after all grant of pension is not a bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."

In the aforesaid case the Apex Court quantified the interest payable at Rs.1 lakh and directed that the same should be paid to the petitioner within two months from the date of the order.

5.4 Ms. Kerawala has next relied upon a decision of the Apex Court in the case of Vijay L. Mehrotra Vs. State of U.P. and others, reported in (2001) 9 SCC 687 (=2000 Lab IC 2663: (2000)2 LLJ 253: (2000)3 LLN 1: (2000) 2 SLR 686), wherein the Apex Court directed the respondent to pay to the appellant within 12 weeks simple interest at the rate pf 18% with effect from the date of her retirement till payment.

5.5 Ms Kerawala also relied upon a decision in the case of Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., reported in AIR 2003 SC 1526. In that case the Apex Court has held that the Division Bench of the High Court, having found that the employee was entitled for interest, was not justified in declining to interfere with the order of the single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the single Judge, could not be said to be arbitrary.

5.6 Thus, the ratio of the above decisions is that if the delay is not on account of lapse on the part of the employee, he is entitled to get interest on the retirement dues. In the present case, as the facts appear from the record, the delay is on the part of the State Government and therefore the petitioner is entitled for interest on the arrears due to the petitioner.

6.1 In the result, the petition succeeds and is accordingly allowed. The concerned respondent is directed to calculate and to pay all consequential benefits to the petitioner including the higher grade scale pursuant to the order dated 6th July 2004, within three months from the date of receipt of writ of this order. The respondent shall pay interest at the rate of 9% per annum on the amount due to the petitioner from the date of filing of the petition i.e. 31.1.1994. If the respondent fails to make such payment within the stipulated period, the payment of interest after three months will be recovered from the concerned officer dealing with the case of the petitioner. In such event, the petitioner will be at liberty to approach this Court for obtaining appropriate orders. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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